

**MINUTES OF THE OCTOBER 31, 2013, MEETING OF
THE DATA SECURITY AND PRIVACY COMMITTEE
HEALTH INFORMATION EXCHANGE AUTHORITY**

The Data Security and Privacy Committee (“DSPC”) of the Illinois Health Information Exchange Authority (“Authority”), pursuant to notice duly given, held a meeting at 2:00 pm on October 31, 2013, at the State of Illinois Bilandic Building, 160 North LaSalle Street, Room N-505, Chicago, Illinois 60601, with telephone connectivity.

<u>Appointed Committee Members Present:</u> Dr. Nicholas Panomitros (in person) Mr. Jud DeLoss Mr. David Holland (phone) Mr. Mick Skott Pat Merryweather William Spence (by phone) David Carvalho Dr. Gunter (phone)	<u>Staff Present:</u> Raul Recarey Krysta Heaney Elizabeth LaRocca Kerri McBride

Call to Order and Roll Call

Ms. Elizabeth LaRocca, Assistant Secretary to the Board, confirmed the presence of the Members of the DSPC indicated above. The ability of those participating by phone to hear clearly was confirmed.

Approval of Agenda

The meeting notice and agenda, as posted in advance in accordance with the Illinois Open Meetings Act, was reviewed and approved without change.

Proposed Breach Protocol Policy

The proposed breach protocol policy was discussed. The policy divides participants into breach participants and affected participants. The ILHIE Authority is a business associate and a source of potential breach. All participants are required to report any known breach to the ILHIE Authority, to promptly investigate, to provide notice and to mitigate the breach. The ILHIE Authority will annually publish breaches occurring in the previous year.

There was a discussion on breach procedure encompassing time frames, methods of notification, protections on shared participant information, and what information must be included in breach notification.

Numerous commentators discussed how the cost of a breach should be calculated and if the ILHIE Authority has the authority to determine breaching participant and costs. A DSPC member stated that the ILHIE Authority does not have the authority to make a determination of the breaching participant and that obligation to mitigate is limited to direct costs. There must be

evidence of direct damages, and this is determined by the breaching party. It was mentioned whether insurance covers a breach.

Commentators discussed the possibility of a dispute resolution process written into the data sharing agreement. It was mentioned that ILHIE Authority may set the parameters to allowable expenses and costs. A commentator suggested ILHIE Authority does not want to be the arbitrating authority and does not have the facility to have administrative hearings, but the ILHIE Authority wants to help facilitate agreement between parties.

The participants reached a general consensus that breaching participants are responsible for breach and mitigation costs incurred by other participants or the ILHIE Authority. Per the current DSA, this responsibility is limited to direct costs. It is recommended that a dispute resolution mechanism be put in place in the DSA t. Additionally, the ILHIE Authority will explore the option of obtaining HIE-wide insurance coverage for all participants.

Presentation on Break the Glass Subcommittee

The DSPC discussed the possibility of an override of the opt out in case of an unconscious patient. The law in Illinois is unclear regarding disclosure of this information in the event of a medical emergency. The current recommendation is that the ILHIE does not implement break the glass. As the ILHIE becomes more robust and laws are changed regarding sPHI, the ILHIE Authority may change that recommendation, but, at this time, there should be no break the glass option.

The subgroup was also tasked with the issue of self-payment and preventing payors from accessing medical information that was paid for directly by the patient, which is a new requirement under HIPAA. It was determined that, at this point, the ILHIE is not capable of filtering this PHI data, so that data must be filtered out at the provider level. .

Meaningful Disclosure

The overarching issue the DSPC grappled with was defining “meaningful” (i.e. how often and in what manner must a patient be reminded of their ILHIE election). The general concern is that patients will forget that their information is being shared through the ILHIE.

It was suggested that an ILHIE notification be attached to current HIPAA notifications. However, HIPAA notifications serve a different purpose than the meaningful disclosure notifications; therefore, such a solution may not be adequate.

Committee members further elaborated upon the complexities of having the ILHIE Authority bear the burden of meaningful disclosure. It was noted that data imported into the ILHIE does not belong to the ILHIE Authority. Moreover, the ILHIE Authority is not a sufficient target point for questions relating to privacy and data access; providers have a greater knowledge of their privacy policies and patients.

A committee member inquired about the nature of the patient-provider relationship. A clarification was presented, stating that by definition a provider is an entity that contracts with the ILHIE Authority.

A committee member clarified that the ILHIE system was not capable of informing users when a notice was given.

A suggestion was made to post OSHA-esque notices in provider waiting rooms and/or common areas. A meeting participant by reasserting that the disclosure must be *meaningful*; it is unlikely that a patient will remember the ILHIE logo or the contents of a sign years after they sign the disclosure agreement.

It was noted that the meaningful disclosure statute requires an annual review and that such reviews provide ample opportunity to discuss technological upgrades and how guidelines should be amended to reflect these upgrades. It is understood that the structure of the notices will change along with the evolution of the ILHIE.

Whatever avenue is chosen, the reminder must be repeated; it must be a material reminder that is delivered at the appropriate time and confirms that the patient's election was a valid one.

A participant questioned whether it would indeed be easier for each provider to act as opposed to having the ILHIE Authority control the entire process. It was suggested that the provider is more likely to be able to answer questions about personal EHRs.

The bottom line is that the language, requirements, and implications of the notice must be both practical and compatible for both patients and providers.

The meeting ended without any official recommendations being made.

Public Comments

There were no comments offered from the general public.

Adjourn

The meeting was adjourned at approximately 4:00 p.m.

[Note: Additional clarifying non-substantive edits were made after Committee approval of the minutes].